

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 ELAN MICROELECTRONICS CORP.,) Case No.: C 09-01531 RS (PSG)
13 Plaintiff,)
14 v.)
15)
16 APPLE, INC.,) (Docket No. 211)
17 Defendant.)
18 _____)

18 Elan administratively moves to file under seal Exhibits B, E, F, G, H, I, J, L, and M to the
19 Declaration of Palani P. Rathinasamy. Elan submits these exhibits in support of its pending motion
20 to compel.¹ Elan seeks to file entire exhibits under seal without also submitting a redacted, public
21 version of each exhibit. Elan claims that submission of heavily redacted documents would not
22 substantially further the policy of providing public access to, and understanding of, court
23 proceedings. For the reasons set forth herein, the motion is DENIED.

24 The Ninth Circuit has explained that “[h]istorically, courts have recognized a ‘general right
25 to inspect and copy public records and documents, including judicial records and documents. This
26 right is justified by the interest of citizens in ‘keeping a watchful eye on the workings of public

¹ See Docket No. 210.

1 agencies.”²

2 “[A] strong presumption in favor of access is the starting point.”³ Under this standard, a
 3 party seeking to seal a judicial record relating to a dispositive motion bears the burden of
 4 overcoming the strong presumption of public access by articulating “compelling reasons” supported
 5 by specific factual findings that outweigh the general history of access and the public policies
 6 favoring disclosure.⁴ For records relating to non-dispositive motions, a threshold lower than
 7 “compelling” applies. “A ‘good cause’ showing under Rule 26(c) will suffice to keep sealed records
 8 attached to nondispositive motions.”⁵

9 There is no question that the pending motion to compel filed by Elan is nondispositive in
 10 nature, implicating the lower “good cause” standards of Rule 26(c). With two exceptions,⁶ however,
 11 instead of establishing good cause to support their request, Elan merely cut-and-pasted variations of
 12 the following generic statement to justify the wholesale sealing of each of the above-mentioned
 13 exhibits: “Good cause exists to seal the entire exhibit as Apple’s response contain confidential
 14 internal product names not publicly known.”⁷ Elan also stated that the exhibits contained
 15 information that designated “Confidential-Attorneys’ Eyes Only” and the information is not publicly
 16 known.

17 Elan’s motion falls short of meeting even the lower “good cause” standard that applies to
 18 nondispositive motions.

19 First, the generic statement above does not justify or even address why Apple’s internal
 20 product names could not simply be redacted in each of the exhibits at issue. If this is the only
 21 justification for the sealing request—and it is for all but two exhibits—it is unclear why a modest effort

22 ² *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (internal
 23 citations omitted).

24 ³ *Id.* at 1178.

25 ⁴ *See id.* at 1178-79.

26 ⁵ *Id.* at 1181.

27 ⁶ With respect to Exhibits L and M, Elan further justifies its request by asserting that the
 28 documents detail the internal operations of Apple’s products.

7 5/24/11 Declaration of P. Rathinasamy at 2.

1 could not preserve both public access to the majority of each exhibit as well as Apple's legitimate
2 proprietary interests. This not only runs afoul of *Kamakana*, but Civil Local Rule 79-5(a), which
3 states that all sealing requests "must be narrowly tailored to seek sealing only of sealable material."

4 Second, under Civil Local Rule 79-5(d), Apple was required to file and serve a declaration
5 establishing that any of its "Confidential-Attorneys' Eyes Only" information included in the above-
6 mentioned exhibits is sealable. This was supposed to be filed within seven days of Elan's motion. It
7 has now been seven days and no declarations have been filed by Apple.

8 In sum, neither party has provided good cause to seal the above-mentioned exhibits. Despite
9 this failure, the parties will be given until noon on June 9, 2011 to file appropriate declarations
10 setting forth good cause why any document relating to Elan's motion to compel, and any portion
11 thereof, should be filed under seal. The parties are advised that their sealing requests must be
12 narrowly tailored in light of the "strong presumption in favor of access" to court documents.

13 IT IS SO ORDERED.

14 Dated: June 1, 2011


PAUL S. GREWAL
United States Magistrate Judge

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